

2. Defendant Yvonne Rosales (“Rosales”) is the current elected District Attorney for the 34th Judicial District, having been duly elected to that position in 2020. Rosales resides in El Paso County, Texas.

JURISDICTION AND VENUE

3. Pursuant to Texas Local Government Code section 87.015, this cause is filed in the county of Rosales' residence.

4. The subject matter is within the jurisdiction of this court.

5. All parties are subject to this court's personal jurisdiction.

6. Rosales accepted service through her attorney Luis Yanez on September 26, 2022.

DISCOVERY

7. Pursuant to Rule 190.1, El Paso County requests that discovery in this case be conducted under a Level 3 Discovery Control Plan. TEX. R. CIV. P. 190.4.

STATEMENT OF FACTS

8. Rosales is the current elected District Attorney for the 34th Judicial District serving El Paso County, Hudspeth County and Culberson County, Texas. She was duly elected to her position in 2020 and assumed office in January 2021.

9. In El Paso, the legislature has prescribed the duties of the District Attorney to represent the state in all criminal cases pending in the inferior courts having jurisdiction in El Paso County.¹ Tex. Gov't Code sec. 43.120.

10. It is the duty of a district attorney to seek justice in her jurisdiction. Tex. Code of Crim. Proc. Art. 2.01.

¹ Except for limited criminal jurisdiction of the County Attorney (juvenile cases, hot check and misdemeanor deceptive business practices).

11. Prior to assuming office, Rosales and her now First Assistant were hired by the previous administration and given access to the District Attorney's office for nine weeks in order to assist her in understanding the operation of the office and facilitating the transition of her new administration.

Failure to Charge Cases in a Timely Manner

a. Detained defendants

12. In her 22 months in office, Rosales failed to timely file pending criminal cases which resulted in the release of hundreds of criminal defendants from jail pursuant to Tex. Code of Crim. Procedure 17.151.

13. Tex. Code of Crim. Procedure 17.151 "Release Because of Delay" requires that a Defendant who is detained in jail pending trial of an accusation against the person be released if the state has not filed charges within ninety (90) days for a felony charge and thirty (30) days or less for a misdemeanor charge. These Defendants are persons who a judge decided not to release after they were arrested for reasons that included public safety.

14. The magistrate courts were forced to release, because of the inaction of Rosales, approximately 184 individuals in 2021 and 138 individuals in 2022 as of October 25, 2022. The individuals who were released into the community were arrested for crimes that included Assault Family Violence, Aggravated Assault Family Violence with A Weapon, DWI 1st, 2nd and 3rd, Failure to Register as a Sex Offender with Previous Conviction, Indecent Exposure, Smuggling of Persons, Robbery, Possession of Firearm by a Felon, and Injury to a Child/Elderly/Disabled Person. The releases have occurred at a significant rate for the last twenty-two months.

b. Defendants released under bond conditions

15. Similarly, with defendants who were released under bond conditions after arrest, Rosales failed, through act or omission, to timely file an information or secure an indictment on numerous pending criminal cases. This resulted in the dismissal of hundreds of pending criminal cases pursuant to Tex. Code of Crim. Proc. 32.01.

16. Tex. Code of Criminal Proc. 32.01 “Defendant in Custody and No Indictment Presented” requires that the prosecution of a case be dismissed and that the bail conditions on a Defendant be discharged if the prosecutor does not present an information or indictment against the person within 180 days unless the prosecutor presents good cause to the court and supports it with an affidavit showing why the prosecution and the bond conditions should not be dismissed.

17. Despite her ability to argue good cause and contest the dismissals under the Tex. Code of Crim. Proc. 32.01, Rosales failed to provide the Court with any legal or factual basis as to why the hundreds of cases should not have been dismissed. Indeed, on one occasion, the District Attorney’s Office sent a paralegal (without either Rosales or one of her Assistant District Attorneys being present) to the legal proceedings where cases were being dismissed.

18. The dismissal of these cases has serious ramifications for victims. Not only were the criminal cases dismissed, the related bond conditions – often put into place to protect the health and safety of victims of crimes – were also dismissed. The dismissal of these bond provisions, such as “do not contact” orders, orders prohibiting the possession of firearms, and orders prohibiting Defendants from going within 200 feet from a specified location and/or business put victims at an increased risk of harm. Upon information and belief there is no indication that DA Rosales timely notified victims protected by bond provisions before the Tex. Code of Crim. Proc. 32.01 dismissals.

19. The dismissal of these cases also increased the risk of harm generally to the health and safety of residents of El Paso County, Texas. For example, the dismissal of numerous DWI cases resulted in the termination of bond provisions meant to protect the public's safety including the restriction of an arrestee's driving privileges or drug and alcohol testing.

20. Additionally, the failure to file cases resulted in criminal defendants being denied the ability to assert their innocence while they wait for the statute of limitations in their cases to expire. This denial results in tangible negative consequences for persons presumed to be innocent and a disarray for the criminal justice system in El Paso. The dismissal of hundreds of cases does not occur in a vacuum. There remains tangible uncertainty on how the system in El Paso will handle the cases when, and if, DA Rosales decides to proceed with prosecution of these cases.

Significant Decrease in Case Filings

21. DA Rosales's failure to process all criminal cases is also reflected in a 60% decrease in the total number of criminal cases filed in El Paso County in 2021 as compared to the prior administration in 2020.

22. The previous District Attorney from 2015 to the end of 2020 filed an average of 6,448 of felony cases and 10,889 misdemeanor cases annually for an average total of 17,337. However, the Rosales administration only filed 6,663 total cases in 2021.

23. Upon information and belief, hundreds of cases remain unscreened and subject to dismissal.

Handling of the *Gabaldon* Criminal Case

24. The *Gabaldon* case involves a 2021 murder charge. The defendant was arrested on February 28th, 2021, and indicted on March 10, 2021, for the charge of Murder. The case was set

for trial on November 5, 2021, and later reset to December 2, 2021. Instead of proceeding to trial, the Honorable Alyssa Perez granted the defense motion to dismiss the murder charge based upon prosecutorial vindictiveness. The case remains on appeal.

25. On November 16, 2022, the trial court considered the State's Motion for Continuance, among other motions. During a discussion on lowering the defendant's bond to a Personal Recognizance bond that would allow him to be released, the State, through ADA Curtis Cox, stated, "Okay. Because the State is saying it is not ready, I am not going to object to that."

Seconds later when the Motion for Continuance was denied, the State announced its intention to reindict the defendant for capital murder, stating, "And, Your Honor, just to be completely transparent, I am also planning to take this case back to the grand jury to reindict it as a capital murder."

26. When the defendant immediately waived its right to 10 days notice and told the Court it was ready to proceed, the State, through Mr. Cox, stated: "I do not think you can do that while we consider whether to seek the death penalty, however.... I will seek the death penalty if that's what becomes necessary."

27. A week later, on November 22, 2021, ADA Cox filed "State's Notice of Intent to Seek the Death Penalty."

28. On December 14, 2021, the Court granted the Defendant's Motion to Dismiss Based on Prosecutorial Vindictiveness with prejudice. It also found that DA Rosales's office sought the death-penalty solely to penalize the defendant for exercising his Constitutional right to a trial. Under any circumstances, the State's conduct and the Court's ruling was extraordinary.

Handling of the Walmart Shooting Case

29. On August 3, 2019, a mass shooting occurred at a Walmart in El Paso, Texas. State and federal authorities have charged Patrick Crusius in the mass shooting that left twenty-three dead and dozens injured. (*Texas v. Patrick Wood Crusius*, 20190D004878 and 20200D02631). The case is commonly referred to as the Walmart case and is of great importance to the El Paso community.

30. On July 1, 2022, the Honorable Judge Sam Medrano of the 409th Judicial District Court held a status hearing in this case and rebuked Rosales for issuing a statement indicating that she would be ready to try this capital murder-death penalty case in less than a year, while at the same time failing to file a single pleading or motion in the prior eighteen-months of Rosales' tenure. On this date, a gag order was issued in the Walmart Shooting case and the District Attorney's office was instructed to inform its employees and the victims of the case that the gag order was applicable to them. Rosales failed to object to the Gag Order at this hearing.

31. After the hearing, Rosales and her team met with the victims of the Walmart shooting. Present at the status hearing and subsequent meeting was Assistant District Attorney John Briggs ("Briggs"). Briggs has testified that Roger Rodriguez ("Rodriguez"), a lawyer in private practice and municipal judge of a small rural village in El Paso County, was allowed to address the victims in the presence of Rosales and other District Attorney office staff. Rodriguez, identified himself as a judge and claimed that Judge Medrano would be recused and that Rodriguez had recused multiple judges. Rodriguez expressed outrage at Judge Medrano's rebuke of Rosales and urged victims to file judicial conduct complaints against Judge Medrano. Rosales stood by and allowed Rodriguez to make these and other statements without correcting him or disagreeing with his personal attack upon Judge Medrano. By her silence, Rosales left the victims of the

Walmart shooting with the impression that Rodriguez was acting on her behalf and with her approval.

32. On August 4, 2022, an email was sent to all media outlets in El Paso purporting to be from Tomas Hoffman, the son of the Mr. Hoffman, who was killed in the Walmart shooting. The email criticized Judge Medrano, and others who had commented on the case. Over concern that this email violated his gag order, Judge Medrano appointed guardian ad litem, Justin Underwood, to represent the interests of Tomas Hoffman, at a show cause hearing.

33. It appears, upon information and belief, that the same 31 recipients of the email purportedly from the Hoffman relative, match the same 31 recipients on the District Attorney's press release list.

34. A hearing on that order has not happened, in part due to the delay tactics of Rosales. These delay tactics appear to have nothing to do with the actual prosecution of the case; the delays appear to pertain to protecting Rosales from responding to facts reported by the ad litem. A report filed by the ad litem alleges that the August 4, 2020, email that purports to be from Tomas Hoffman was written and sent by Rodriguez and his wife, Ana, who used the phone of Tomas Hoffman's mother to send the email. The ad litem report includes affidavits, recordings of Rodriguez and detailed allegations which claim that the email was sent without the permission of the Hoffman family and more importantly, the recordings suggest that Rodriguez held himself out as an agent of Rosales.

35. Rosales has repeatedly, at both the trial court and on appeal, fought the introduction of the ad litem report. Rosales has filed a Motion to Recuse the Honorable Sam Medrano, a request for Mandamus, motions to clarify trial court proceedings and sent multiple attorneys to oppose a hearing on the ad litem report. As the duly elected District Attorney, she should be held to a higher

standard and rather than oppose the introduction of facts, she should be fully and freely explaining the extraordinary circumstances to the public. Instead, Rosales, rather than expending tax dollars on the prosecution of the alleged Walmart shooter, is expending public funds to thwart the introduction of evidence that may reveal misconduct on her part.

36. This same report outlines how the District Attorney's Office filed a motion for continuance and represented to the court that it did not have contact specifically with the Walmart Shooting victims, Alexander Hoffman, Tomas Hoffman, and Rosa Maria Valdez, yet Rodriguez, as a purported representative of Rosales, was allegedly advising them to not answer calls or appear for a hearing.

37. Rodriguez has held himself out as representing the interests of the District Attorney in the Walmart Shooting case on more than one occasion. In one instance, Defense counsel for the Walmart shooter offered to meet with Rosales to offer hundreds of pages of mitigation evidence regarding the Defendant. Instead of going herself, Rosales sent Rodriguez apparently as her representative, along with Assistant District Attorney Curtis Cox ("Cox"), to meet with the Walmart shooter's defense counsel to discuss the mitigation evidence. As of this *filing*, Rosales has failed to request the offered documents from defense counsel.

38. As it relates to the actual prosecution of the Walmart Shooting case, Rosales retained only one attorney from the prior administration with significant death penalty experience, John Briggs, and he was later terminated on August 22, 2022.

39. While Rosales had hired two special prosecutors to assist in the prosecution, the lead prosecutor resigned from the District Attorney's office within weeks of accepting her position. In at least one instance, Rodriguez insinuated himself into the handling of the Walmart case by meeting with Rosales, her first assistant, and the special prosecutors, and addressing the handling

of the case with one of the special prosecutors. Despite witnessing Rodriguez' interference, Rosales allowed Rodriguez to again weigh in on the prosecution of the case.

40. Weeks afterwards, Rodriguez was still involved in the prosecution of the case by meeting with Cox on the 3rd floor of the County Courthouse minutes before the start of the September 27, 2022 recusal hearing regarding Judge Medrano, and was presumably in the District Attorney's office for the hearing. At that hearing, Defense counsel thought he heard Rodriguez's voice. When asked if Rodriguez had been with him in the morning, Cox answered "No."

41. Unable to prosecute the Walmart case herself, Rosales has asked the Texas Attorney General ("Texas AG") for assistance in prosecuting the case. The Texas AG has declined to assist her office. DA Rosales has not communicated to the public if the AG will maintain a role in the Walmart proceeding.

42. Furthermore, it is unclear who is currently running the office. In his unusual November 3, 2022, letter to the judge "withdrawing" from the Walmart Shooting case, former lead prosecutor Cox told the court that all further communication and filings in the case should be directed to Rosales. However, Rosales and Cox are allegedly evading service of subpoenas in the Walmart Shooting case, as described fully in the Defendant's Response to the State's Objection to Hearing filed on November 10, 2022.

43. Most recently, on Thursday, November 17, 2022, at yet another Walmart hearing, an Assistant District Attorney, at the direction of Judge Medrano, could not even contact Rosales or her First Assistant, George Al-Hanna. Instead, Rosales sent an Assistant District Attorney who just found out about the assignment the day before the hearing to argue the State's motion in the highest profile case in her office. When asked by Judge Medrano, this Assistant District Attorney could not even tell the court what work had been done on this case in the last few months. Assistant

District Attorney Scott Ferguson, who filed the motion, could not attend in person for medical reasons. Nonetheless, Rosales chose not to appear for the hearing, and failed to send someone with more experience and familiarity with the case to represent the State in El Paso's most high-profile case.

Bad Faith by Rosales

44. In order to delay the proceedings in this removal case, Rosales made representations to this Honorable Court and undersigned counsel which have proven to be false. She has further failed to notify this Honorable Court and undersigned counsel that she would not comply with her representations or provide a reason for same. This conduct can only be viewed as bad faith by Rosales and a deliberate attempt to delay these proceedings based upon false assertions.

CAUSES OF ACTION

I. Incompetency

45. Incompetency can be demonstrated by (1) Gross ignorance of official duties or (2) Gross carelessness in the discharge of those duties. Tex. Loc. Gov't Code Ann. § 87.011(2).

46. Rosales' incompetency is demonstrated by both her conduct AND the conduct of her subordinates. Rosales is legally and ethically responsible for the misconduct of her subordinates and agents when they act on behalf of the State of Texas. The State Bar Rules require that a supervisor that learns of a subordinate's unethical behavior that she knew or should have known would occur must take affirmative steps to take remedial or mitigating action. See also *De Anda v. State*, 131 S.W.3d 198, 202 (Tex. App. 2004), and Texas Disciplinary Rules of Professional Conduct 5.01(b).

47. Incompetency requires that an elected official's conduct be more than just an error in judgment, but even when done in good faith, it can be grossly careless. See *De Anda v. State*, 131 S.W.3d 198, 202 (Tex. App. 2004). Moreover, an official's ability to delegate responsibility to others or rely on others for the performance of their duties does not relieve the official from his responsibility "to supervise and control at least in a general way and in a reasonably efficient manner, all affairs of his office." *Id.*

48. DA Rosales has demonstrated incompetency while in office regarding her failure to competently perform the following duties:

- i. Having inadequate processes and staffing to competently screen criminal cases being submitted by law enforcement. This resulted in:
 1. Failure to obtain felony indictments or file misdemeanor informations against detained defendants prior to the statutorily mandated release contained in Tex. Code Crim. Proc. Ann. Art. 17.151.
 - a. Rosales's incompetency resulted in a public safety risk by allowing detained individuals who were not released on a bond after being arrested to now be released.
 2. Failure to file charges against hundreds of defendants, and therefore their cases were dismissed per the Tex. Code Crim. Proc. Ann. Art. 32.01.
 - a. In doing so, Rosales also failed to contest the dismissals and give the court "good cause" to not dismiss the cases.

- b. The dismissal of these cases ended bond conditions, such as “do not contact” orders that put victims at risk, possibly without notification to the victims or with victim input.
 - c. The dismissal of these cases ended bond conditions which were put in place to protect the health and safety of the community.
- 3. Rosales allowed her Senior Division Chief, Curtis Cox, in a single hearing to seek the Death Penalty against a Defendant that moments earlier he stated he would not object to releasing on a Personal Recognizance Bond.
 - a. The result of these actions resulted in a finding by the Court of prosecutorial vindictiveness. Rather than take remedial or mitigation action against Cox, she put him in charge of the Walmart Shooting case, El Paso’s most high-profile criminal case. The pending appeal does not obviate the damage to the public’s confidence in the District Attorney’s office and Rosales’ ethical duties when dealing with a subordinate’s misconduct.
- 4. Rosales is the Chief Prosecutor and Chief Law Enforcement Officer representing the State in three counties, yet she is actively evading service of a subpoena in the Walmart Shooting case. At the November 17, 2022 hearing on her motion objecting to the hearing, she sent an attorney with little or no prior involvement in the case to cover a hearing on her motion instead of other attorneys with more knowledge,

including herself. Finally, and when needed at that hearing, both she and her First Assistant could not be found by one of her own attorneys.

49. These acts and omissions constitute acts of Incompetency as defined under Local Government Code 87.011(2) in that they demonstrate both gross ignorance of DA Rosales' official duties and her gross carelessness in the discharge of her duties as District Attorney.

II. Misconduct

50. Misconduct is the "intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. This term also includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law." Tex. Loc. Gov't Code Ann. §87.011(3).

51. In the Walmart case, the alleged misconduct of Roger Rodriguez is imputed to Rosales. At a hearing to recuse Judge Medrano, Rosales testified that Rodriguez represented her as counsel in two legal matters. Upon information and belief, Rodriguez has also represented the public interests of Rosales in connection with the Walmart case on at least five separate occasions: First, when Rodriguez addressed the Walmart victims in the presence of Rosales in her office following the July 1, 2022 status hearing; Second, when Rodriguez attended a meeting with defense counsel to discuss mitigation evidence; Third, when Rodriguez attended a meeting with the special prosecutor – and Rosales – to discuss the handling of the Walmart case; Fourth, when he reached out to the Hoffman family to cause the fictitious email to be sent to the media; and Fifth, while Rosales has attempted to distance herself from the actions of Rodriguez, he is seen on courthouse video meeting with ADA Cox immediately prior to the September 27, 2022 recusal hearing. Rosales' misconduct is based upon the actions of Rodriguez and her incompetence is based upon either her ignorance of his conduct or indifference to same. In each instance,

Rodriguez represented the interest of the office and as her agent, his action and misconduct, especially as it pertains to the highest profile case in her office, cannot be ignored.

52. It appears that Rosales made false and misleading statements under oath at the September 27, 2022, recusal hearing. Upon information and belief, these statements were made in order to conceal the representations made by Rodriguez to the Walmart victims at the meeting that occurred after the July 1, 2022 status hearing at the District Attorney's office. There were witnesses present at this meeting who can testify as to Rosales' false or misleading statements.

53. On her behalf, Rodriguez allegedly had improper contact with Walmart shooting victims, improperly gave legal advice to Walmart shooting victims, improperly advised Walmart shooting victims to disobey a court order, improperly promised benefits to Walmart shooting victims to disobey a court order and retaliated against Walmart shooting victims. Rodriguez' improper behavior ONLY occurred because Rosales allowed Rodriguez to have access to these and other Walmart victims.

54. Meanwhile, the District Attorney's Office represented to the 409th District Court that it did not have contact specifically with the Walmart Shooting victims, Alexander Hoffman, Tomas Hoffman, and Rosa Maria Valdez, when Rodriguez was allegedly advising them to not answer calls or appear for a hearing. And rather than **protect** the Walmart victims, the ad litem report alleges that the widow of one the Walmart victims was detained by federal officials at the request or pursuant to information provided by District Attorney Office personnel.

55. And most recently, in this removal proceeding, Rosales misrepresented facts to the court in order to prevent the State from filing an Amended Petition and Motion for a Suspension. Under Rule 8.04(a), Misconduct, of the Texas Rules of Professional Conduct, a lawyer shall not ... (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (4) engage in

conduct constituting obstruction of justice; or (5) state or imply an ability to influence improperly a government agency or official.

56. These acts and omissions constitute acts of Official Misconduct by Rosales, as defined under the Texas Local Government Code §87.011(3), in that they demonstrate intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The bad faith demonstrated by Rosales must be immediately addressed.

REQUEST FOR SUSPENSION

57. This Honorable Court has the authority to suspend the District Attorney pending a final resolution of this proceeding. Tex. Loc. Gov't Code §87.017. This office respectfully requests that Rosales be immediately suspended pending resolution of this case. The allegations and issues raised are too serious and potentially detrimental to the community to allow the status quo to remain. The State additionally requests that a reasonable bond be set for the Court's selected temporary appointment at the level required under Chapter 43 of the Texas Government Code. Tex. Gov't Code §43.002.

CONCLUSION

58. Rosales's official misconduct and continued incompetence clearly disqualifies her from continuing in her elected position.

59. Under the circumstances, Rosales has demonstrated that she should be removed from the office to which she was elected.

JURY DEMAND

60. As required by Local Government Code section §87.018, a jury trial is demanded.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, EL PASO COUNTY ATTORNEY JO ANNE BERNAL on behalf of the State of Texas, respectfully requests that: the Court temporarily suspend District Attorney Yvonne Rosales and appoint another person to perform the duties of the office, in accordance with Local Government Code section §87.017; and after trial on the merits, a jury finding be entered that DA Rosales is incompetent, and/or that she committed official misconduct, thereby warranting removal from office pursuant to Local Government Code Chapter 87, and that DA Rosales be so removed; and that the Court award court costs to the State and/or Relator and any other relief to which it may be entitled.

Respectfully submitted,

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